



POLICE DEPARTMENT

December 16, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Robert May
Tax Registry No. 916159
34 Precinct
Disciplinary Case No. 2010-2306

The above-named member of the Department appeared before me on September 20, 2011,¹ charged with the following:

1. Police Officer Robert May, on or about July 24, 2010, failed to appear for his scheduled overtime assignment after being notified about said assignment prior to July 24, 2010.

P.G. 206-03, Page 1, Paragraph 1 VIOLATIONS
P.G. 205-18 – ABSENT WITHOUT LEAVE

2. Police Officer May, on or about July 23, 2010, made incorrect memobook entries in that he used the incorrect date when he recorded his activity.

P.G. 203-05, Page 1, Paragraph 4 PERFORMANCE ON DUTY

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, pleaded guilty to one of the subject charges and not guilty to the remaining charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

¹ The trial record was held open until September 27, 2011, for the receipt in evidence of a document.

DECISION

Respondent is found Guilty of Specification No. 1. Respondent, having pleaded guilty, is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on Friday, July 23, 2010, Respondent, who was assigned to Police Service Area (PSA) 1, performed his regularly scheduled tour of duty. During his tour, Respondent received a radio transmission directing him to return to his command. When Respondent entered the PSA 1 roll call room, he engaged in a conversation with Police Administrative Aide Kesha White.

The Department's Case

The Department called Police Administrative Aide Kesha White and Police Officer Monique Lewis as witnesses.

Police Administrative Aide Kesha White

Police Administrative Aide (PAA) White, who is assigned to PSA 1, testified that one of her duties is to prepare the roll call for the first and second platoons. She recalled that on Friday, July 23, 2010, the Administrative Lieutenant for PSA 1 handed her a typed list containing the names of eight police officers assigned to PSA 1 who were

scheduled to perform overtime tours of duty on Saturday, July 24, 2010. She noticed that Respondent's name was on the list. She and Respondent were friends.

She recalled that she was seated at her desk inside the roll call room when she saw Respondent enter the roll call room. She told Respondent that he had to work an overtime tour the next day. Respondent, who appeared "a little annoyed," told her, "I knew they were going to do this. This is my first weekend off. I knew this was going to happen. I'm going to go sick." She believed Respondent was "just upset and venting."

On Monday, July 26, 2010, White was told that Respondent had not appeared to perform his overtime tour of duty on Saturday, July 24, 2010.

On cross-examination, White confirmed that it was her job to make overtime notifications to officers assigned to PSA 1 who worked on the first and second platoons. Overtime notifications to officers assigned to PSA 1 who worked on the third platoon were made by another PAA. White testified that scheduled overtime notifications to officers assigned to PSA 1 were made verbally or via a notification slip. She confirmed that if an overtime notification made to an officer assigned to PSA 1 was on a written form, the officer was required to sign the form to confirm receipt of the notice.

Police Officer Monique Lewis

Police Officer Lewis, who is assigned to PSA 1 and serves as the Youth Officer, testified that she was present inside the roll call room on Friday, July 23, 2010, when Respondent entered the roll call room. Lewis heard White tell Respondent, "You have OT tomorrow." Respondent then told White, "I'm going sick." After Respondent walked out of the roll call room, Lewis told White, "You know his ashy ass is really

going to go sick.” Lewis then told White, “You make sure that you write down that he was verbally notified” that he had to perform an overtime tour the next day. Later during the following week, Lewis was told that Respondent had not appeared to perform his overtime tour of duty on Saturday, July 24, 2010.

On cross-examination, Lewis confirmed that other than hearing White tell Respondent, “You have overtime tomorrow,” she did not hear White tell Respondent anything else about the overtime tour. Lewis asserted that PSA 1 had only one tour of overtime on Saturdays during July, 2010. Lewis testified that she has received overtime notifications while assigned to PSA 1 from White. Sometimes these overtime notifications were made by White verbally and sometimes these overtime notifications were made by White in a written notification.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent testified that after the incident that is the subject of Specification No. 1, he was transferred from PSA 1 to the 34 Precinct. With regard to Specification No. 1, Respondent recalled that when he entered the PSA 1 roll call room on Friday, July 23, 2010, White, with whom he was friendly, laughingly told him, “Ha, ha, you have overtime this weekend!” Respondent recalled that he then “vented” to White, “You know they always do this. You know as soon as we swing a weekend there’s orders for overtime. If they order me overtime, I’m going sick.” White then told him, “Ha, ha,

that's why you're going to have overtime." Respondent and White then chatted "about various things."

Respondent testified that he did not report to perform overtime on Saturday, July 24, 2010, because normally overtime notifications were made in writing, and sometimes sent to him via FAX, and he had expected that he would receive a specific notification in writing informing him of which weekend day and what hours he was required to perform overtime.

Since he never received any written notification regarding performing overtime, he assumed that he did not have an overtime assignment on either Saturday, July 24, 2010, or Sunday, July 25, 2010. Respondent testified that he did not call in sick on Saturday, July 24, 2010. Respondent asserted that "I did not believe that I had overtime" on Saturday, July 24, 2010.

With regard to Specification No. 2, Respondent agreed that on July 23, 2010, he made an incorrect entry in his memo book in that he entered the incorrect date when he recorded his activity.

On cross-examination, Respondent confirmed that written notices listing the names of officers who have been assigned to perform overtime are posted in the PSA 1 muster room. Respondent asserted that he did not see any list posted for the coming weekend. He did not ask his sergeant or the Administrative Lieutenant where the list was. Respondent agreed that it is possible that he had stated at his official Department interview that he had planned to spend that particular weekend with his son.

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that Respondent failed to appear for his scheduled overtime assignment on July 24, 2010, after he had been notified about this assignment prior to July 24, 2010.

Respondent does not dispute that he did not report for an overtime assignment on July 24, 2010. Respondent contends that he was not properly notified that he was required to appear for an overtime assignment on July 24, 2010.

I find Respondent guilty because I credit the testimony of PAA White, which was corroborated by the testimony of Police Officer Lewis, that on Friday, July 23, 2010, White told Respondent that he had been assigned to perform an overtime tour of duty the next day, Saturday, July 24, 2010. Respondent testified that during this conversation White told him, "Ha, ha, you have overtime this weekend!"

Even if I credited Respondent's claim that White said "this weekend" rather than the next day, Respondent is still guilty of failing to report for his overtime assignment on July 24, 2010, because based on what Respondent testified White told him, it was Respondent's responsibility to ascertain the day and hours of his weekend overtime assignment.

I reject Respondent's contention that he was free to assume that he did not have any weekend overtime assignment merely because he did not receive what Respondent characterized as a "proper notification" informing him as to the specific tour he would be performing and where he had to report. This argument ignores the fact that, having been alerted about the overtime assignment by White, it was Respondent's responsibility, and

indeed his duty, to ascertain the details of his weekend overtime tour. Respondent acknowledged that written notices listing which PSA 1 officers are assigned to perform weekend overtime are posted in the muster room, although Respondent asserted that on Friday, July 23, 2010, he did not see any list posted for the coming weekend. I find that the record establishes that he affirmatively tried to avoid knowing anything more about his overtime assignment than what White had told him. This is reflected by his admission on cross-examination that he never asked his sergeant or the Administrative Lieutenant where the weekend overtime list was or if his name was included on it.

Also, Respondent corroborated White's and Lewis' testimony that after White alerted him about his weekend overtime assignment, he stated, "I'm going sick." Respondent admitted that he stated, "You know they always do this. You know as soon as we swing a weekend there's orders for overtime. If they order me overtime, I'm going sick."

His admission that he had "vented" to White that "they always do this," betrays that he was upset that he had been designated to perform weekend overtime. Moreover, his statement that he would report sick rather than perform any weekend overtime shows that he had no intention of reporting for any weekend overtime assignment. These statements belie Respondent's claim that the only reason he did not report to perform weekend overtime was because he was never informed as to what specific tour he would be performing and where he had to report. If Respondent had actually wanted to know what specific tour he had been assigned to and where he was to report, he could have asked White, who testified that she possessed a typed list with his name on it, or a

supervisor. Instead, he admitted that he simply told White, "I'm going sick" and then proceeded to chat with her "about various things."

The fact that Respondent did not actually call in sick does not serve to support his claim that "I did not believe that I had overtime." I find that rather than falsely report that he was ill, Respondent simply decided to invent a fiction that, despite what White had told him, he truly believed that he had no weekend overtime assignment.

Finally, Respondent's admission that he may have stated at his official Department interview that he had made plans to spend that weekend with his son shows that he had a motive to want to avoid reporting for his overtime assignment on Saturday, July 24, 2010.

Respondent is found Guilty of Specification No. 1.

Specification No. 2

It is charged that on July 23, 2010, Respondent made an incorrect entry in his memo book in that he entered the incorrect date when he recorded his activity.

Respondent, having admitted his misconduct and pleaded guilty, is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

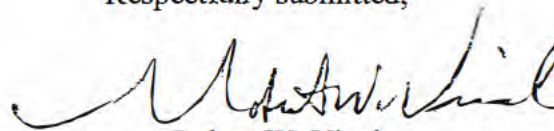
Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of having failed to appear for a scheduled overtime assignment after he had previously been notified about this assignment. Respondent has pleaded guilty to having made an incorrect entry in his memo book by entering an incorrect date when he recorded his activity.

The Assistant Department Advocate recommended that Respondent forfeit 30 vacation days. In formulating a penalty recommendation, I have taken into consideration that the record here establishes that Respondent knew full well that he had been scheduled to perform an overtime assignment on a weekend and that he willfully failed to appear to perform this overtime assignment. I have also taken into consideration Respondent's previous misconduct (as detailed in the attached confidential memorandum).

Therefore, consistent with progressive discipline, I recommend that Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED
MAY 23 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

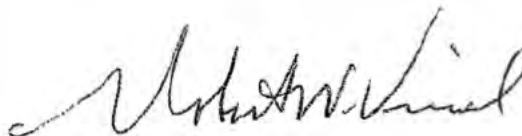
From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT MAY
TAX REGISTRY NO. 916159
DISCIPLINARY CASE NO. 2010-2306

Respondent received an overall rating of 3.0 on his 2010 annual performance evaluation, 3.0 on his 2009 evaluation, and 3.0 on his 2008 evaluation. He has been awarded one Excellent Police Duty medal. [REDACTED]

[REDACTED] He has no monitoring records.

He has a formal disciplinary record. In 2005, he forfeited 20 vacation days after he pleaded guilty and admitted that in October, 2004, he disobeyed a sergeant's instructions that he not notify a suspect (who was working at Respondent's residence) that the suspect was wanted on an arrest warrant, and that he contact narcotics officers when the suspect arrived at his residence so that the officers could respond and arrest the suspect. Respondent's failure to contact the narcotics officers and his action of alerting the suspect about the existence of the warrant resulted in the suspect fleeing and prevented the timely apprehension of the suspect.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials